

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

NAIRA OGANESSOVA, a married woman,

Plaintiff,

vs.

MUTUAL OF OMAHA LIFE INSURANCE  
COMPANY a/k/a MUTUAL OF OMAHA  
INSURANCE COMPANY, a foreign  
corporation,

Defendant.

Case No.:

COMPLAINT

**JURY DEMAND**

TO THE DEFENDANT:

The Plaintiff, by and through her attorneys, NELSON LANGER ENGLE, PLLC, based upon information and belief alleges the following:

**I. PARTIES, JURISDICTION, AND VENUE**

1.1. The Plaintiff, Naira Oganessova, is a resident of King County, Washington, and at all times relevant a participant in several disability policies offered by MUTUAL OF OMAHA LIFE INSURANCE COMPANY a/k/a MUTUAL OF OMAHA INSURANCE COMPANY.

1.2. The Defendant, MUTUAL OF OMAHA LIFE INSURANCE COMPANY a/k/a MUTUAL OF OMAHA INSURANCE COMPANY, (hereinafter "MUTUAL") is a foreign

1 corporation, doing business in the State of Washington, with its principal place of business in  
2 the State of Nebraska.

3 1.3. The matter in controversy, exclusive of interest and costs, exceeds the sum of  
4 Seventy-Five Thousand Dollars (\$75,000.00); as such, this Court has diversity jurisdiction over  
5 this matter pursuant to 28 U.S.C. § 1332.

6 1.4. Venue is proper in this district under 28 U.S.C. § 1391 as Plaintiff is a resident  
7 of King County, Washington, a substantial part of the events or omissions giving rise to  
8 Plaintiff's claims occurred in this district, and MUTUAL does business in this district.

9 **II. FACTUAL ALLEGATIONS**

10 2.1. In June of 2010, while walking in her bedroom at night, Plaintiff Naira  
11 Oganessova tripped and fell and struck her head on the side of her bed and the floor.

12 2.2. After her fall, Plaintiff began suffering dizziness, vertigo, nausea, and other  
13 disabling symptoms due to her fall. Plaintiff was ultimately diagnosed with post-concussive  
14 disorder.

15 2.3. At the time of her fall, Plaintiff was a Teacher and Interpreter providing Home  
16 Health Aide Courses, and she was insured under three disability policies issued by Defendant.  
17 Plaintiff was insured under Policy No. D81DN3G-630470-99MC, Policy No. D81DN4G-  
18 894846-99M, and Policy No. D83A4G-894845-99M.

19 2.4. Due to the disabling symptoms from her fall, Plaintiff was forced to reduce her  
20 hours from full-time work to part-time; as such, Plaintiff submitted an application for disability  
21 benefits to Defendant on August 31, 2010.

22 2.5. On November 11, 2010, Defendant acknowledged Plaintiff's application for  
23 disability benefits and stated that it was in the process of reviewing her claim.

1           2.6. On December 30, 2010, Defendant requested additional information from  
2 Plaintiff.

3           2.7. On January 17, 2011, Defendant requested additional earnings information from  
4 Plaintiff.

5           2.8. On March 7, 2011, Defendant denied Plaintiff's claims for disability benefits  
6 under policies D81DN3G-630470-99MC and D81DN4G-894846-99M stating that Plaintiff's  
7 policies have elimination riders for Disease and Disorder of the Ear and Disease and Disorder  
8 of the Esophagus.

9           2.9. On April 13, 2011, Plaintiff appealed Defendant's denial of her disability  
10 benefits.

11           2.10. Defendant, on May 16, 2011, after appeal review, again denied Plaintiff's claims  
12 for disability benefits, based on the same assertion of an elimination rider.

13           2.11 On August 11, 2011, Plaintiff requested a full and complete copy of her claim  
14 from Defendant.

15           2.12. On August 18, 2011, Defendant responded and stated that it was not required to  
16 produce a complete copy of Plaintiff's claim file.

17           2.13. On October 24, 2011, Plaintiff repeated her request for a full and complete copy  
18 of her claim file.

19           2.14. On November 14, 2011, Defendant reversed its decision and produced what it  
20 claimed was Plaintiff's "entire claim file."

21           2.15. On September 17, 2012, Plaintiff sent medical records and neuropsychological  
22 testing establishing Plaintiff's disability to Defendant.  
23

1           2.16. On October 30, 2012, Defendant informed Plaintiff that it was reviewing her  
2 claim for benefits.

3           2.17. On November 21, 2012, Defendant informed Plaintiff that it was still reviewing  
4 her claims for benefits.

5           2.18. On December 3, 2012, Plaintiff submitted additional evidence in support of her  
6 disability claims.

7           2.19. On February 7, 2013, Plaintiff submitted her final appeal documents to  
8 Defendant in support of her disability claims.

9           2.20. On March 11, 2013, Defendant informed Plaintiff that it contacting an “outside  
10 source” to conduct a peer review of Plaintiff’s claims.

11           2.21. On May 10, 2013, Plaintiff sent Defendant correspondence indicating that it had  
12 been two months since Defendant’s letter of March 11, 2013, which had noted that Defendant  
13 was reviewing her claims. Plaintiff’s correspondence noted that it had been over three months  
14 since Plaintiff submitted her final appeal documents and Defendant had yet to make a  
15 determination on Plaintiff’s claims.

16           2.22. On May 24, 2013, Defendant stated that Plaintiff’s claims had been sent out for  
17 a neuro-otology review and that it was expected that this review would be completed by  
18 approximately May 31, 2013.

19           2.23. Prior to suit, by letter dated June 12, 2013, Plaintiff provided Defendant with her  
20 contentions regarding Defendant’s violation of the Insurance Fair Conduct Act (“IFCA”), RCW  
21 48.30.010 and RCW 48.30.015. Notice is required by IFCA and was sent by registered mail,  
22 return receipt requested to Defendant, as to well as the Office of Insurance Commissioner as  
23 required by statute.

1           2.24. More than twenty days have now elapsed and Defendant has failed to resolve  
2 the basis of this action within the twenty day written IFCA notice provided by Plaintiff.

3           2.25. Defendant, on July 15, 2013, again denied Plaintiff's claims for disability  
4 benefits.

5           2.26. Defendant conducts its claim review process in a manner that results in the  
6 denial of valid claims.

7           2.27. Plaintiff presented the Defendant with objective medical proof of her disability,  
8 supported by her treating and examining physicians, and without ever examining the Plaintiff,  
9 Defendant refused to consider the same.

10          2.28. Plaintiff has sustained severe economic and emotional damages as a result of  
11 Defendant's actions.

12                           **I. FIRST CLAIM – BREACH OF CONTRACTS**

13          Plaintiff readopts and realleges all of the foregoing and, in addition, alleges the  
14 following:

15          3.1 Defendant's disability policies, referenced above, provide disability benefits to  
16 Plaintiff and Defendant received appropriate consideration for the same.

17          3.2 Defendant has breached the contracts by failing to abide by the terms of the  
18 disability policies.

19          3.3 Defendant's breach of these contracts has caused the Plaintiff to sustain  
20 damages.

21                           **II. SECOND CLAIM – BREACH OF THE COVENANT**  
22                                   **OF GOOD FAITH AND FAIR DEALING**

23          Plaintiff readopts and realleges all of the foregoing and, in addition, alleges the  
following:

1           4.1     Defendant had a duty to deal with Plaintiff in good faith.

2           4.2     At all relevant times herein, Defendant's original termination of benefits under  
3 Plaintiff policies and subsequent refusals to rescind those terminations were unreasonable and  
4 without adequate justification and therefore constitute the tort of a breach of the implied  
5 covenant of fair dealing in insurance contracts.

6           4.3     Defendant's conduct and actions related to Plaintiff's claim for benefits  
7 breached the covenant of good faith and fair dealing in several other respects, including, but  
8 not limited to the following:

- 9           • Terminating benefits and failing to reinstate benefits on appeal without a full,  
10 fair, and objective investigation of Plaintiff's condition.
- 11           • Failure to give proper weight during the appeal process to the opinions of  
12 treating and examining physicians who certified that Plaintiff was totally  
disabled from any occupation.

13           4.4     During the investigation and evaluation of Plaintiff's claims, Defendant failed to  
14 give Plaintiff's interests at least as much consideration as its own interests.

15           4.5     Defendant's breach of the covenant of fair dealing in insurance contracts  
16 constitutes a repudiation of its obligations under the contracts.

17           4.6     As a result of the wrongful actions of Defendant, Plaintiff has not been paid all  
18 of the benefits to which Plaintiff is entitled under her policies, as well as all benefits which  
19 would have been due in the future. Plaintiff has also suffered extra-contractual damages such  
20 as mental anguish, emotional distress, attorney fees, court costs, and foreseeable economic  
21 losses as a consequence of Defendant's actions.

22           4.7     The Defendant acted with malice, moral turpitude, wantonness, willfulness or  
23 reckless indifference to the rights of others. Defendant and its employees had actual  
knowledge of the wrongfulness of the conduct and the high probability that injury or damage to

1 the claimant would result, and despite that knowledge, intentionally pursued the course of  
2 conduct that resulted in the injury and damage to Plaintiff.

3 **III. THIRD CLAIM – VIOLATION OF THE WASHINGTON**  
4 **INSURANCE FAIR CONDUCT ACT**

5 Plaintiff readopts and realleges all of the foregoing and, in addition, alleges the  
6 following:

7 5.1 Defendant has unreasonably denied Plaintiff's claim for payment of disability  
8 benefits under her disability policies and unreasonably upheld those decisions on appeal and  
9 she is therefore entitled to recover the actual damages sustained, as well as the cost of this  
10 action, including reasonable attorney fees, expert witness fees, and actual and statutory  
11 litigation costs, RCW §48.30.015(3).

12 5.2 Defendant has unreasonably terminated Plaintiff's disability benefits and  
13 unreasonably denied her appeal of those decisions and therefore violated RCW 48.30.015(5).  
14 Plaintiff is therefore entitled to an award of up to three times her actual damages as set forth in  
15 RCW 48.30.015(2).

16 **IV. JURY DEMAND**

17 Pursuant to FRCP 38(b) and the Seventh Amendment to the United States Constitution,  
18 Plaintiff demands a trial by jury of all issues so triable under the law.

19 **V. PRAYER FOR RELIEF**

20 6.1 WHEREFORE, the Plaintiff prays for a judgment against the Defendant in an  
21 amount that compensates Plaintiff for damages sustained, as follows, to the extent that they  
22 are not duplicative:

23 A) All damages shown at trial which proximately flow from Defendant's  
breach of Plaintiff's contracts, as set forth above;

- 1           B) All damages shown at trial for Defendant's bad faith dealings with its  
2           insured;
- 3           C) All damages shown at trial for Defendant's violation of Washington's  
4           Insurance Fair Conduct Act, including an award up to three times the  
5           actual damages as allowed in RCW 48.30.015;
- 6           D) For declaratory judgment forcing Defendant to honor its continuing  
7           obligation owed Plaintiff on her disability policies;
- 8           E) For Plaintiff's costs and disbursements incurred by bringing these causes  
9           of action, to include reasonable attorney's fees, along with pre-judgment  
10          interest and any other relief permitted by law, which the Court deems  
11          just and equitable.

12          DATED this 14<sup>th</sup> day of August, 2013.

13                               NELSON LANGER ENGLE, PLLC

14                               /s/ Aaron I. Engle

15                               Aaron I. Engle, WSBA #37955

16                               1015 N.E. 113th Street

17                               Seattle, WA 98125

18                               Telephone: (206) 623-7520

19                               Facsimile: (206) 622-7068

20                               [englea@nlelaw.com](mailto:englea@nlelaw.com)

21                               Attorneys for Plaintiff

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